



MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Violet Varona-Lukens, Executive Officer  
Clerk of the Board of Supervisors  
383 Kenneth Hahn Hall of Administration  
Los Angeles, California 90012

Chief Administrative Officer  
County Counsel  
Auditor-Controller  
Director of Planning  
Director of Public Works

At its meeting held July 22, 2003, the Board took the following action:

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Supervisor Antonovich made the following statement:

“At the request of the Board of Supervisors, the County’s Auditor-Controller conducted the attached audit of the La Vina Mello-Roos Community Facilities District (Community Facilities District No. 7, or CFD No. 7). The Auditor-Controller recently completed the audit and submitted its findings to the Board of Supervisors on July 9, 2003.

“As a component of the original approval for the La Vina project in Altadena, the County authorized the formation of a Mello-Roos community facilities district. In theory the County issues bonds under a CFD and the proceeds of these bonds are drawn down by the project developer as public improvements are designed and constructed. The bonds are retired over a lengthy period, typically 20 or 30 years, by assessments on each tract in a subdivision. The intent is to provide for costly public improvements up front and to pay for these improvements over time; ideally this reduces the costs of homes in the tracts and spreads the financial burden out over many years.

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“Based upon what the Auditor-Controller has revealed, what occurred at the La Vina project is inconsistent both with State law and with existing County policies. The La Vina developer has been reimbursed for unallowable costs, items not eligible under Mello-Roos or Board policies, and questionable costs, unsupported-inadequately supported items. As reported by the Auditor-Controller, errors include double-billing by the developer, reimbursements that exceeded caps established in the CFD agreement between the developer and the County, and inadequate documentation of invoices.

“The audit documents a pattern of behavior on the developer’s part that is suspect at best and may have violated State law. The Department of Public Works’ oversight was careless and significantly below what the public expects of County employees. The public, in general, and residents of La Vina in particular, have a legitimate right to be outraged.

“The audit makes several recommendations both to correct errors on this community facilities district and to prevent similar errors from occurring on future CFD’s. In addition to the recommendations in the audit, the greater issue of public trust in government must also be addressed. Given the developer’s record in this case, such as submitting invoices twice and submitting invoices for items not eligible for reimbursement, it is incumbent upon the County to enact a penalty on the developer of the La Vina project. The penalty should reflect both the severity of these infractions and serve as an incentive to developers to comply with State law and County policies concerning Mello-Roos community facilities districts.”

Adrian Foley, representing Brookfield Homes, addressed the Board.

After discussion, on motion of Supervisor Antonovich, seconded by Supervisor Knabe, unanimously carried, the following Department Heads were instructed to investigate the following issues, with a report back to the Board within 14 days:

1. County Counsel to explore legal action against the developer of the La Vina project in Altadena for unallowable and questionable costs, including double-billing and reimbursements that exceeded caps established in the Community Facilities District (CFD) agreement as reported by the Auditor-Controller;

(Continued on Page 3)

16 (Continued)

2. The Directors of Public Works and Planning, and the Auditor-Controller to recommend penalties that can be imposed upon the developer; and
3. The Director of Public Works, the Auditor-Controller and the Chief Administrative Officer to report back to the Board concerning the recommendations in the Auditor-Controller's audit of the La Vina project.

In addition, the Auditor-Controller was requested to report back to the Board within 14 days on the issues raised at the meeting by Adrian Foley.

4072203-16

Attachment

Copies distributed:  
Each Supervisor



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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July 9, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair  
Supervisor Gloria Molina  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: J. Tyler McCauley *tm*  
Auditor-Controller

Subject: **LA VINA MELLO-ROOS AUDIT  
(COMMUNITY FACILITIES DISTRICT NO. 7)**

As requested, we have completed a review of allegations by a group of La Vina residents that the County did not properly oversee or monitor the usage of the La Vina Mello-Roos District Acquisition Fund (Fund).

**BACKGROUND**

The Board of Supervisors established the Community Facilities District (CFD or District) No. 7 in July 1995, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982. The CFD included approximately 107 acres of land owned by a developer in the unincorporated Altadena area which the developer proposed to develop into a gated community of residences, now known as La Vina Estates. In August 1999, the District issued \$9.0 million in bonds, which are secured by special taxes levied within the District over 30 years.

In March 1998, the County entered into a Funding and Acquisition Agreement (F&AA or Agreement) with the developer which, among other things, listed the facilities to be paid for by the CFD. This list included the estimated costs of these facilities. Under the Agreement, the County's Department of Public Works (DPW) was responsible for monitoring the developer's compliance with the Agreement and for approving the developer's requests for reimbursements of expenditures through the Fund.

**METHODOLOGY**

We interviewed staff from the Department of Parks and Recreation (DPR), DPW, Department of Regional Planning (DRP) and the Treasurer and Tax Collector (TTC), reviewed applicable documents and performed detailed reviews of the reimbursements

from the Fund to the developer. At the request of the Fifth District, we also met with a group of La Vina residents regarding their charges.

### **REVIEW SUMMARY**

#### **Financial Oversight**

To date, the County processed five reimbursement requests from the developer totaling \$7.8 million. We identified deficiencies in the payment request and reimbursement processes including DPW not having adequate monitoring mechanisms or procedures in place to review and monitor the expenditures the developer submitted for reimbursement. As a result, we found soft costs (e.g., engineering and consulting costs) exceeded the caps specified in the F&AA; the developer over-recovered invoices, or submitted the same invoice more than once; the developer improperly categorized expenditures; and DPW did not establish clear documentation guidelines for reimbursement requests. DPW needs to re-design the payment request and reimbursement processes to address the deficiencies we identified.

We conducted a detailed review of the documentation supporting the developer's reimbursement requests to determine if DPW authorized payment requests reimbursing the developer for only eligible costs and that the reimbursements were adequately documented.

We classified findings into two categories: unallowable costs (i.e., not allowable under Mello Roos or Board policies) and questioned costs (i.e., unsupported/inadequately supported). The following table summarizes our findings.

<b>Unallowable/Questioned Costs</b>	<b>Amount</b>
Ineligible expenditures	\$ 117,000
Invoice over-recoveries	289,000
Duplicate invoices	11,000
Refundable deposits	387,000
Soft costs exceeding caps	124,000
Unsupported/inadequately supported costs	785,000
<b>Total</b>	<b><u>\$1,713,000</u></b>

We also identified \$306,000 in mis-categorized costs (i.e., costs related to one expenditure category that were improperly categorized into another.)

DPW should collect the \$1,713,000 from the developer, or allow the developer to submit additional, allowable expenditures to offset this amount. DPW should also make adjustments to record inappropriately categorized expenditures into the correct categories.

**Amendment to the Funding and Acquisition Agreement**

The residents charged that DPW did not formally amend the F&AA as required to include a new expenditure category. We found the residents were correct. The F&AA required DPW and the developer to formally amend the F&AA to include any new expenditure category. DPW did not ensure the F&AA was amended. Specifically, the County reimbursed the developer \$620,000 from the Fund for legal expenditures and expenditures related to the formation of the CFD. This expenditure category was not listed in the F&AA. Accordingly, DPW should have amended the F&AA to include this expenditure category prior to the County reimbursing the developer for these expenditures, but DPW did not.

**School Fees**

The F&AA indicated the developer would seek reimbursement of approximately \$1.7 million in school fees through the Fund, but the developer did not. The residents questioned if the developer had actually paid the school fees. We found the developer paid the school fees, although he did not ask for reimbursement through the Fund, even though they were an allowable charge. We attempted to contact the developer to ascertain the reason(s) he did not ask for reimbursement through the Fund, but the developer did not respond to our attempts to obtain this information.

Related to this, the residents charged that the County should have amended the F&AA to indicate the developer would not seek reimbursement of school fees. The F&AA does not clearly state the developer has the option of not seeking reimbursement for any expenditure in a listed category. To do so has the effect of deleting an expenditure category, with a corresponding re-allocation of those funds to existing or new expenditure categories. For future CFDs, DPW, in conjunction with County Counsel, should revise the language in the F&AA to clearly state the developer has the option of not requesting reimbursement of any expenditure in an expenditure category and that DPW will amend the F&AA to reflect re-allocation to existing or new expenditure categories.

**Mitigation Fees**

Mitigation fees are fees that the County or other jurisdictions require developers to pay to minimize the impact of the development on neighboring resources and the environment. The La Vina residents view these as penalties assessed against the developer and, as such, believe the developer should not be allowed to seek reimbursement of these penalties through the Fund. The mitigation fees that were approved in the F&AA include Quimby fees (fees for park improvements assessed as a condition of development) and Eaton Canyon Habitat restoration fees (fees the County imposed to restore certain parts of Eaton Canyon to mitigate the negative impact of the development on land adjacent to the development.)

The County assessed the developer approximately \$600,000 in Quimby fees and \$480,000 in restoration fees and reimbursed the developer through the Fund for the developer's payment of these fees. County Counsel stated that neither statute nor case law specifically restricts the reimbursement of these through Mello-Roos. Nevertheless, the Board's policy governing Mello-Roos is silent on the permissibility of these types of mitigation fees. The County's Mello-Roos Task Force should specifically evaluate the permissibility of reimbursing a developer for mitigation fees through Mello-Roos, under County policy, and advise the Board of its findings and recommendations.

**Improvements at Loma Alta Park**

The residents alleged that the County reimbursed the developer for approximately \$500,000 in soft costs (i.e., engineering and consulting costs) related to improvements at Loma Alta park, but the community has seen little improvement in the park. We noted that the developer incorrectly categorized approximately \$182,000 in non park related expenditures under Park Improvements. This mis-categorization addresses the community's question.

**REVIEW OF REPORT**

We thank County Counsel, DPR, DPW, DRP and TTC management and staff for their cooperation and assistance during our review. We reviewed our report with DPW and TTC management. DPW's written response (attached) indicates general agreement with our recommendations, and the Department has taken action to address some of the deficiencies identified in this report.

If you have any questions, please contact me or have your staff contact DeWitt Roberts at (213) 974-0301.

JTM:DR:JK  
Attachments

c: David E. Janssen, Chief Administrative Officer  
Lloyd W. Pellman, County Counsel  
Timothy Gallagher, Director, Department of Parks and Recreation  
James A. Noyes, Director, Department of Public Works  
James Hartl, Director, Department of Regional Planning  
Mark J. Saladino, Treasurer and Tax Collector  
Violet Varona-Lukens, Executive Officer  
Mello-Roos Task Force  
Audit Committee (6)  
Public Information Officer

# **Los Angeles County**

## **La Vina Mello-Roos Audit (Community Facilities District No. 7)**

**July 2003**

Prepared by:

Department of Auditor-Controller



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**La Vina Mello-Roos Audit  
(Community Facilities District No. 7)**

**BACKGROUND**

The Board of Supervisors established the Community Facilities District (CFD or District) No. 7 in July 1995, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982. The CFD included approximately 107 acres of land owned by a developer in the unincorporated Altadena area which the developer proposed to develop into a gated community of residences, now known as La Vina Estates. The purpose of the CFD was to provide financing for the developer, through the issuance of bonds, for the acquisition and/or construction of certain public improvements in the area, the costs of formation of the CFD, and the costs of issuance of the bonds. In August 1999, the District issued \$9.0 million in bonds, which are secured by special taxes levied within the District over 30 years.

In March 1998, the County entered into a Funding and Acquisition Agreement (F&AA or Agreement) with the developer which, among other things, listed the estimated uses of the bond proceeds. (See Attachment I) In general, the developer was to use the bond proceeds to finance the acquisition and/or construction of certain public facilities (e.g., street improvements, park improvements and storm drainage) and for school and sanitation district fees required as a condition of the development. Under the F&AA, the County's Department of Public Works (DPW) was responsible for monitoring the developer's compliance with the Agreement and for approving the developer's requests for reimbursement of expenditures through the La Vina Mello-Roos District Acquisition Fund (Fund). The Treasurer and Tax Collector (TTC) then processed the payment requests to reimburse the developer from the Fund.

**SCOPE/OBJECTIVES**

We conducted the audit at the request of the Fifth District. The purpose of our audit was to review charges by a group of La Vina residents that the County did not properly oversee or monitor the usage of the Fund.

**METHODOLOGY**

We interviewed staff from the Department of Parks and Recreation (DPR), DPW, Department of Regional Planning (DRP) and the Treasurer and Tax Collector (TTC), reviewed applicable documents and performed detailed reviews of the reimbursements from the Fund to the developer. At the request of the Fifth District, we also met with a group of La Vina residents regarding their charges as outlined above.

**COMMENTS AND RECOMMENDATIONS**

**Financial Oversight**

**Deficiencies in the Reimbursement Process**

Exhibit D of the F&AA outlined the process through which the developer was to request reimbursement for expenditures through the Fund. In general, the developer was to complete a Payment Request, attesting that the costs for which it was seeking reimbursement were actual, not inflated, supported by appropriate documentation, and in conformance with the F&AA. Upon receipt of the Payment Request, DPW was responsible for ensuring the costs were reasonable and the public improvements for which the developer was seeking reimbursement were completed. DPW forwarded approved requests to the Treasurer and Tax Collector for an authorization of payment.

The County made five reimbursements to the developer as follows:

**Table I**  
**La Vina Mello-Roos District Acquisition Fund**  
**Summary of Reimbursements**

<b>Reimbursement</b>	<b>Reimbursement Date</b>	<b>Amount</b>
<b>Reimbursement Request #1</b>	12/20/1999	\$2,922,466
<b>Reimbursement Request #2</b>	11/15/2000	2,625,631
<b>Legal/CFD Formation Reimbursement</b>	12/05/2000	620,690
<b>Reimbursement Request #3</b>	01/04/2001	1,026,088
<b>Reimbursement Request #4</b>	12/04/2001	616,969
<b>Total Reimbursements</b>		<b>\$7,811,844</b>

Source: A-C, Accounting Division

We identified deficiencies in the payment request and reimbursement processes. For example:

- **DPW did not provide sufficient review and monitoring of the expenditures the developer submitted for reimbursement.** This resulted in the following problems.
  - ✓ **Soft costs (e.g., engineering and consulting costs) exceeded the caps specified in the F&AA.** DPW reimbursed the developer in excess of the soft cost cap limit for all five of the soft cost cap categories in the F&AA.
  - ✓ **Invoices were over-recovered, or the same invoice paid more than once.** We found the developer would often allocate one invoice among several different expenditure categories, but the sum of the individual allocations exceeded the total invoice amount (i.e., an over-recovery). We also found the

- developer submitted duplicate invoices. DPW should have tracked the invoices the developer submitted by vendor name, invoice number, invoice date and invoice amount to prevent over-recoveries or payment of the same invoice more than once, but they did not.
- ✓ **Expenditures were improperly categorized by expenditure category.** We found the developer categorized expenditures into each of the Facility Categories (e.g., drainage, park improvements, etc.) and DPW did not review these categorizations to ensure they were correct.
  - **DPW did not sufficiently, clearly, or consistently document expenditures which they did not approve for reimbursement.** After the developer submitted the reimbursement requests to DPW, DPW would, in some cases, disallow or approve a partial reimbursement based on work completed, verified by field inspectors. However, DPW did not identify the expenditures, or portions of expenditures, they were not approving. This made it difficult to reconcile the reimbursement request the developer submitted to the expenditures authorized for payment by DPW.
  - **The developer did not consistently cross-reference reimbursement requests to supporting documentation.** We noted that many of the invoices the developer submitted for reimbursement contained multiple lines. The developer did not in all cases reference the applicable line(s) on the invoice to expenditure amounts claimed on its reimbursement requests. As a result, reimbursement requests could not always be reconciled to invoices. For example, the developer submitted a request for reimbursement of two expenditures of \$21,658 and \$7,392, neither of which reconciled directly to any line on the attached invoices.
  - **DPW did not establish clear documentation guidelines for reimbursement requests.** As discussed further in this report, we noted that in many instances, the developer simply submitted a reimbursement request form indicating the expenditure amount and vendor, but no invoice or statement from the vendor indicating the services rendered, nor evidence the developer had paid for the services.

DPW needs to re-design the payment request and reimbursement processes to address the deficiencies discussed above. Specifically, in these re-designed processes, the developer should submit a completed payment request with all supporting documentation attached and sufficiently referenced. DPW should establish written criteria that define the types of supporting documentation that it will accept (e.g., a copy of an invoice with a cancelled check) and review the reimbursement request, and ensure all supporting documentation is valid and clearly referenced. DPW should clearly document those expenditures it is not approving. DPW should perform analyses to ensure invoice amounts are not over-recovered and are not duplicates, nor been paid

previously. DPW should also ensure the developer is correctly categorizing the expenditures and ensure that the developer does not exceed soft cost caps.

**Recommendation**

1. DPW management re-design the payment request and reimbursement processes to address the deficiencies discussed above.

**Unallowable and Questioned Costs**

We conducted a detailed review of the documentation supporting the developer's reimbursement requests to determine if DPW reimbursed the developer for only eligible costs and that the reimbursements were adequately documented. As a part of the review, we developed a database using relevant invoice fields (i.e., vendor name, number, date, amount, etc.) from each supporting invoice and performed various analyses of the data.

We classified findings into two categories: unallowable costs (i.e., not allowable under Mello-Roos or Board policy) and questioned costs (i.e., unsupported/inadequately supported). The following table summarizes our findings.

**Table II**  
**La Vina Mello-Roos District Acquisition Fund**  
**Summary of Detailed Testwork**

<b>Unallowable/Questioned Costs</b>	<b>Amount</b>
Ineligible expenditures	\$ 117,000
Invoice over-recoveries	289,000
Duplicate invoices	11,000
Refundable deposits	387,000
Soft costs exceeding caps	124,000
Unsupported/Inadequately supported	785,000
<b>Total</b>	<b><u>\$1,713,000</u></b>

• **Ineligible Expenditures**

We identified approximately \$117,000 in expenditures that were not eligible for reimbursement under Mello-Roos or Board policy. Included in this total were:

- Approximately \$82,000 for security services and approximately \$15,000 related to the construction of the retaining walls within the gated community. These expenditures are not eligible for reimbursement as Board policy requires the service have a regional benefit. These services benefited only the residents within the development.

- Approximately \$15,000 in performance bond insurance and approximately \$5,000 in payments to Arrowhead Water Company for bottled water and office snacks. These expenditures are not eligible under Mello-Roos.

- **Invoice over-recoveries**

We identified \$289,000 in invoice over-recoveries, or requested reimbursements that exceeded the invoice amount. For example, in one instance, the developer allocated an invoice totaling \$131,011 between two expenditure categories and in two different reimbursement requests. However, when we summed the individual reimbursement amounts requested, they totaled \$223,361, which resulted in an over-recovery of \$92,350.

- **Duplicate Invoices**

We also reviewed invoices to determine if the developer submitted invoices for reimbursements more than once. We identified three invoices that the developer submitted twice for reimbursement resulting in duplicate payments of approximately \$11,000.

- **Refundable Deposits**

We found that the developer submitted reimbursements for refundable deposits totaling \$387,000. This included \$126,000 in deposits to Southern California Edison (SCE). We contacted SCE who stated it was highly likely they had refunded these amounts to the developer. However, SCE would not release further information without the developer's consent, which we were unable to obtain.

We also noted that the developer received reimbursement for two deposits totaling \$260,000 related to the installation of proposed street signals adjacent to the development. DPW's policy is to refund these deposits to developers after five years if DPW determines the street signals are not warranted. Based on our review, this period does not end until 2006.

DPW should not accept refundable deposits as eligible for reimbursement under Mello-Roos because deposits are not actual reimbursable expenditures until they are used. We noted that the Board policy does not specifically exclude this, but it should. The Mello-Roos Task Force should revise the Board policy accordingly.

- **Soft Costs Exceeding Caps**

The F&AA placed caps on soft costs for each Facility Category as a percentage of hard costs. (See Attachment II) We identified \$124,000 in soft costs that exceeded these caps. DPW stated they did not monitor these soft costs, but they should have.

DPW also stated that based on their experience, developers often have difficulty in obtaining the information from consultants and engineers necessary to appropriately allocate the consultants' and engineers' total costs on a development into eligible costs (i.e., those which have regional benefit and are directly related to the public infrastructure improvements as listed in the F&AA) and ineligible costs (i.e., those that only benefit the residents of the development.) For these reasons, the Mello-Roos Task Force should formally evaluate the permissibility of reimbursing a developer for soft costs through Mello-Roos, under County policy, and advise the Board of its findings and recommendations.

- **Unsupported/Inadequately supported costs**

We were not able to determine the permissibility or appropriateness of \$785,000 in expenditures because they were not supported or inadequately supported. In many of these instances, the developer simply submitted a reimbursement request form indicating the expenditure amount and vendor, but no invoice or statement from the vendor indicating the services rendered, nor evidence the developer had paid for the services.

- \$295,000 (38%) of this total was related to salaries for two employees. The documentation the developer submitted to support the employee salaries consisted of a schedule with an employee name, salary amount, and the description of either supervision or consultation. The schedule did not contain pay period, date, payroll register information or other necessary details such as number of hours allocated to the project.
- \$242,000 (31%) of this total was related to Legal and CFD management expenditures. TTC, in conjunction with County Counsel, reviewed and approved the associated reimbursement request, but there was no supporting documentation for these expenditures in the files we reviewed.
- The remaining \$248,000 related to miscellaneous costs such as permits fees and consultation fees. For these costs, the developer did not submit invoices with his reimbursement request forms.

We provided DPW with supporting documentation of our findings in this area and DPW concurs with the findings. DPW should collect the unallowable and questioned costs from the developer, or allow the developer to submit additional, allowable expenditures to offset this amount.

**Recommendations**

2. **DPW should not accept refundable deposits as eligible for reimbursement under Mello-Roos.**

3. The Mello-Roos Task Force should revise the Board policy to specifically state refundable deposits are not eligible for reimbursement under Mello-Roos.
4. The Mello-Roos Task Force should formally evaluate the permissibility of reimbursing a developer for soft costs through Mello-Roos, under County policy, and advise the Board of its findings and recommendations.
5. DPW should collect the unallowable and questioned costs from the developer, or allow the developer to submit additional, allowable expenditures to offset this amount.

- **Improperly Categorized Costs**

We reviewed each of the reimbursed invoices to ensure that expenditures were properly categorized in the appropriate Facility Category. We noted the developer had mis-categorized approximately \$306,000. For example:

- Approximately \$182,000 in non park related expenditures were incorrectly categorized under Park Improvements. This included \$85,000 related to the bond issuance, which should have been recorded in the Legal and CFD Management expenditure category. It also included \$97,000 related to consulting fees, which should have been recorded in the drainage, street improvements, grading and landscaping expenditure categories. As a result, the total expenditure for the park improvements expenditure category was overstated by \$182,000. This mis-categorization answers one of the community's questions as to why so much money had been spent on park improvements, with no or actual improvement in Loma Alta park.
- \$117,000 related to street inspection and permit fees was recorded in the Legal and CFD Management expenditure category instead of Street Improvements.

DPW should make adjustments to record these expenditures into the correct categories.

**Recommendation**

6. DPW management make adjustments to record inappropriately categorized expenditures into the correct categories.

**Amendment to the Funding and Acquisition Agreement**

The Mello-Roos Task Force, comprised of representatives of various County departments (see Attachment III), reviewed and approved the estimated uses of the Fund. The approved uses were grading, street improvements, storm drainage,



landscape, park improvements, and school and district fees and were codified in Exhibits B and C of the F&AA. Section 15 of the F&AA required DPW to formally amend the F&AA to include any new expenditure category. The residents charged that DPW did not formally amend the F&AA as required to include a new expenditure category. We found the residents were correct and that DPW did not ensure the F&AA was amended.

TTC reimbursed the developer \$620,000 from the Fund for legal expenditures and expenditures related to the formation of the CFD. This expenditure category was not listed in the F&AA. Accordingly, DPW should have amended the F&AA to include this expenditure category prior to the County reimbursing the developer for these expenditures, but DPW did not. In the future, DPW should comply with the amendment requirements of the F&AA.

### **Recommendation**

#### **7. DPW management comply with the amendment requirements of the F&AA.**

#### **School Fees**

School districts require developers to pay a fee to help mitigate the effect of a development on the capacity of the neighboring school districts. In the case of the La Vina project, the developer was required to pay approximately \$1.7 million in school fees to the Pasadena Unified School District. The Board of Supervisors Mello-Roos Community Facilities Act Goals and Policies of 1994 (Board Policy) allows school fees to be reimbursed through Mello-Roos.

Exhibits B and C to the F&AA indicated the developer would seek reimbursement of the school fees, but he did not. As a result, the residents questioned whether the developer had actually paid the school fees, which were required as a condition of development.

DPW provided us with school fee receipts, totaling \$1.3 million, paid by the developer to the Pasadena Unified School District, for 202 (74%) of the 272 houses in the development. DPW could not locate receipts for the remaining 70 homes. We applied an average school fee per home to the 272 homes in the project and estimated the developer's total school fee expense to be approximately \$1.7 million, which is consistent with the estimate in Exhibits B and C to the F&AA. DPW stated that they only release a building permit after they receive a receipt for payment of school fees, so it is highly likely the developer paid the school fees on the remaining 70 homes.

We contacted the developer to ascertain the reason(s) he did not seek reimbursement of the school fees from the Fund, as originally planned. However, the developer did not respond to our attempts to obtain this information.

Related to this, the residents charged that the County should have amended the F&AA to indicate the developer would not seek reimbursement of school fees. DPW stated that under the F&AA, the developer had the option of not seeking reimbursement for any expenditures in a facility category listed in Exhibits B and C. While the F&AA is clear that the expenditure amounts listed in the Exhibits are estimates, the F&AA does not clearly state that the developer has the option of not seeking reimbursement for any expenditures in a facility category. To do so has the effect of deleting a facility category, while increasing fund balances that can be used for other eligible expenditures.

For future CFDs, DPW, in conjunction with County Counsel, should revise the language in the F&AA to clearly state the developer has the option of not requesting reimbursement of any expenditures in an expenditure category. Further, if the developer decides to not seek reimbursement in an expenditure category, DPW should, upon reviewing reimbursement requests to determine if additional expenditures or a new category is warranted, formally amend the F&AA to reflect the deletion of the expenditure category and the re-allocation of funds to existing or new expenditure categories.

### **Recommendation**

- 8. DPW management, in conjunction with County Counsel, revise the language in the F&AA for future CFDs to clearly state the developer has the option of not seeking reimbursement of any expenditures in an expenditure category and require that DPW formally amend the F&AA to reflect the deletion of the expenditure category and the re-allocation of estimated expenditures to existing or new expenditure categories.**

### **Mitigation Fees**

Mitigation fees are fees that the County or other jurisdictions require developers to pay to minimize the impact of the development on neighboring resources and the environment. The La Vina residents view these as penalties assessed against the developer and, as such, believe the developer should not be allowed to obtain reimbursement of these penalties through the Fund. The mitigation fees that were approved in the F&AA include Quimby, and Eaton Canyon Habitat restoration fees.

The California Government Code, Section 66477, allows the legislative body of a city or county to require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition of development. These fees are known as Quimby fees. In the case of the La Vina project, the County assessed the developer approximately \$600,000 in Quimby fees and reimbursed the developer through the Fund for the developer's payment of these fees. The developer was also required to restore certain parts of Eaton Canyon, also in Altadena, to mitigate the negative impact of the La Vina development on land adjacent to the development. The developer was reimbursed \$480,000 for the associated expenditures through the Fund.

County Counsel stated that neither statute nor case law specifically restricts the reimbursement of these fees through Mello-Roos. We reviewed the F&AA for three other CFDs in the County and found none included Quimby fees or environmental restoration fees as estimated use of funds. Further, the Board Policy does not specifically address the permissibility of Quimby, nor environmental restoration fees. The Mello-Roos Task Force should evaluate the permissibility of reimbursing a developer for mitigation fees through Mello-Roos, under County policy, and advise the Board of its findings and recommendations.

**Recommendation**

- 9. The Mello-Roos Task Force formally evaluate the permissibility of reimbursing a developer for mitigation fees, under County policy, through Mello-Roos and advise the Board of its findings and recommendations.**

**Other Issues**

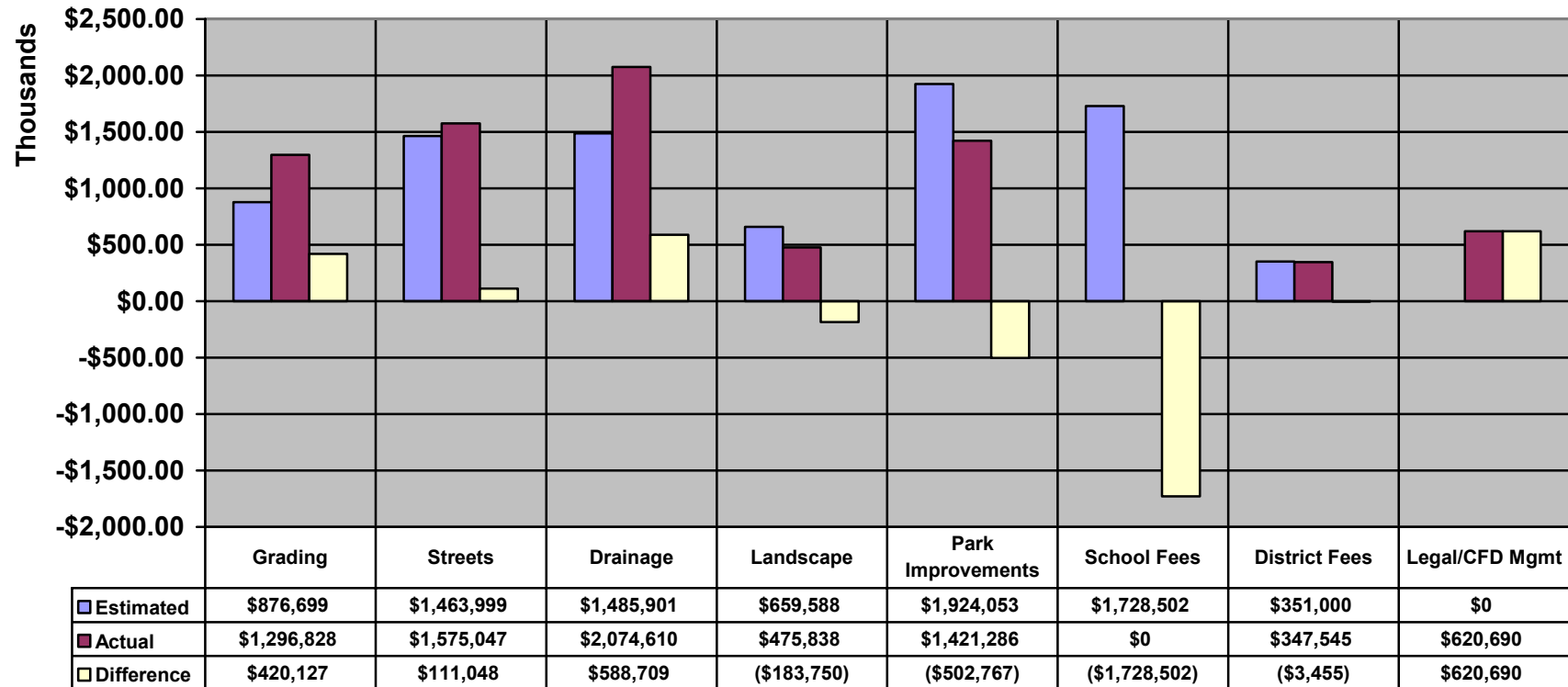
DPW did not monitor the developer's compliance with the F&AA requirement that the developer competitively bid construction projects and select the lowest responsible bidder who was required to pay prevailing wages. DPW stated that it was not aware of any construction contracts the developer entered into after the formation of the CFD (July 1995) and that it did not receive any contracts for review. DPW should establish a formal mechanism to monitor the developer's compliance with this F&AA requirement.

**Recommendation**

- 10. DPW establish a mechanism to monitor developer compliance with the F&AA requirement to competitively bid projects and select the lowest responsible bidder who is required to pay prevailing wages.**

**La Vina Mello-Roos Audit  
(Community Facilities District #7)**

**Estimated Expenditures vs. Actual Expenditures**



■ Estimated   
 ■ Actual   
 ■ Difference

**La Vina Mello-Roos Audit  
Comparison of Soft Cost Caps to Actual**

Soft Cost Types	Cap	Cap with 10% Contingency	Actual	Difference
<b>Engineering Design</b>	8.0%	8.8%	9.7%	0.9%
<b>Construction Consultant</b>	6.0%	6.6%	7.3%	0.7%
<b>Plan Check / Permit Fees</b>	6.0%	6.6%	7.4%	0.8%
<b>Misc.</b>	2.0%	2.2%	2.4%	0.2%
<b>Construction Supervision</b>	2.0%	2.2%	2.4 %	0.2%

**Mello Roos Task Force Members**

1. Chief Administrative Office
2. Community Development Commission
3. County Counsel
4. Forester and Fire Warden
5. Health Services
6. Parks and Recreation
7. Public Library
8. Public Works
9. Sheriff
10. Treasurer and Tax Collector
11. Regional Planning



JAMES A. NOYES, Director

## COUNTY OF LOS ANGELES

### DEPARTMENT OF PUBLIC WORKS

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Telephone: (626) 458-5100  
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ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE  
REFER TO FILE: FI-2

July 3, 2003

TO: J. Tyler McCauley  
Auditor-Controller

FROM: James A. Noyes *JAN*  
Director of Public Works

#### **RESPONSE TO THE LA VINA MELLO-ROOS AUDIT COMMUNITY FACILITIES DISTRICT NO. 7**

Attached is our response to the recommendations contained in the final report. As noted in the response, we generally agree with the recommendations and have begun implementing many of the actions specified in your report. However, we have determined that the deficiencies noted by the Auditor-Controller does not appear to have a material impact on the residents of La Vina nor will there will be a net financial impact on Community Facilities District No. 7.

If you have any questions, your staff may contact Raymond Low, Head of Internal Audit Group, at (626) 458-6950.

RL:cb

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Attach.

**PUBLIC WORKS' RESPONSE TO THE LA VINA MELLO-ROOS AUDIT  
(COMMUNITY FACILITIES DISTRICT NO. 7)**

**RECOMMENDATION #1**

**DPW management re-design the payment request and reimbursement processes to address the deficiencies discussed above.**

**RESPONSE**

We agree with the recommendation and believe the process must be clearly defined and changed when the Funding and Acquisition Agreement is initially drafted. We propose including a process similar to our current construction contracting procedures to eliminate the necessity of individual invoices and receipts. Reimbursements would be based entirely upon completion of work from contracts awarded for the construction of Mello-Roos facilities. Completed work would still be verified by Public Works inspectors but reimbursement requests would be processed solely from payments made toward the contract. In these instances, the developer would be required to submit a cancelled check in order to receive reimbursements. In order to change the payment process as described above, Public Works will work with the Mello-Roos Task Force, specifically County Counsel and the Treasurer and Tax Collector, in order to make the necessary changes.

Until the process described becomes effective, Public Works is in the process of making several changes to the payment request and reimbursement processes. First, Public Works has developed a checklist to ensure that the reimbursement request agrees with the terms and amounts as listed in the Funding and Acquisition Agreement. In addition, Public Works is in the process of establishing documentation guidelines for the developer that will require the developer to submit the following:

- Detailed and cross referenced reimbursement request schedules
- Copies of invoices
- Copies of the cancelled checks (front and back)
- Summary and supporting spreadsheets for each category (which must be submitted electronically.) At a minimum, this will include the category name, invoice numbers, vendor name, total invoice amount, line item amount, applicable line item number referenced on invoice (if applicable), check number, check date, date check cleared, and a description.

Upon review, the Construction Coordinator will forward the Reimbursement Request Package to representatives in the Financial Management Branch. Representatives will then perform various analyses to ensure that the soft costs



**PUBLIC WORKS' RESPONSE TO THE LA VINA MELLO-ROOS AUDIT  
(COMMUNITY FACILITIES DISTRICT NO. 7)**

do not exceed the caps specified in the Funding and Acquisition Agreement, invoices are not over recovered or the same invoice paid more than once, and expenditures are properly categorized. Any expenditures that are not approved for reimbursement will be clearly, sufficiently, and consistently documented on the Reimbursement Request Schedule.

**STATUS**

Target for implementation – August 1, 2003

**RECOMMENDATION #2**

**DPW should not accept refundable deposits as eligible for reimbursement under Mello-Roos.**

**RESPONSE**

We agree. Our redesigned payment request and reimbursement procedures (see response to Recommendation #1) will ensure that all invoices and supporting schedules are reviewed to ensure that refundable deposits are not reimbursed under the Mello-Roos Fund.

**STATUS**

Target for implementation – August 1, 2003

**RECOMMENDATION #3**

**The Mello-Roos Task Force should revise the Board policy to specifically state refundable deposits are not eligible for reimbursement under Mello-Roos.**

**RESPONSE**

We agree that refundable deposits are not eligible for reimbursement under the Mello-Roos Fund.

**STATUS**

Target for implementation – November 30, 2003. However, this date is subject to change based upon the determination of the Mello-Roos Task Force and guidance from the Board.

**PUBLIC WORKS' RESPONSE TO THE LA VINA MELLO-ROOS AUDIT  
(COMMUNITY FACILITIES DISTRICT NO. 7)**

**RECOMMENDATION #4**

**The Mello-Roos Task Force should formally evaluate the permissibility of reimbursing a developer for soft costs through Mello-Roos, under County policy, and advise the Board of its findings and recommendations.**

**RESPONSE**

We agree.

**STATUS**

Target for implementation – October 31, 2003. However, this date is subject to change based upon the determination of the Mello-Roos Task Force and guidance from the Board.

**RECOMMENDATION #5**

**DPW should collect the unallowable and questioned costs from the developer, or allow the developer to submit additional, allowable expenditures to offset this amount.**

**RESPONSE**

We agree. The developer has already provided proof of payment of more than \$2,000,000 in school fees. These were already listed as a specific item to be reimbursed by Mello-Roos in the Funding and Acquisition Agreement. We will disallow those items specified in the audit report and apply the amount toward the school fees category. The developer has also provided additional invoices for other work completed, but did not submit them for reimbursement because they had already received the maximum amount authorized for reimbursement from Mello-Roos. This completed work would also qualify under the existing categories of the original Agreement.

We will request supporting documentation for questioned costs from the developer and require that the developer submit this information within 20 days. Upon receipt, we will evaluate the information, determine whether the questioned costs are permissible, and take the necessary action. We may also mutually agree to simply disallow some of these questioned costs and apply the actual costs of qualifying work already completed.

**PUBLIC WORKS' RESPONSE TO THE LA VINA MELLO-ROOS AUDIT  
(COMMUNITY FACILITIES DISTRICT NO. 7)**

**STATUS**

Target for implementation – September 1, 2003.

**RECOMMENDATION #6**

**DPW management make adjustments to record inappropriately categorized expenditures into the correct categories.**

**RESPONSE**

We agree. Public Works is in the process of adjusting pay items into the proper categories in conjunction with the amendment to the Funding and Acquisition Agreement. Public Works has also drafted an amendment to the Agreement for the Community Facilities District #7 to include a legal expenditure category and anticipates it to be fully executed by the end of July 2003.

**STATUS**

Target for implementation – August 1, 2003.

**RECOMMENDATION #7**

**DPW management comply with the amendment requirements of the F&AA.**

**RESPONSE**

Public Works agrees with the recommendation and has implemented procedures which include a checklist, revised payment request, and reimbursement procedures (see response to Recommendation #1) to ensure amendments are properly processed for all Mello-Roos projects before approving a payment request.

As previously mentioned, Public Works has initiated the Funding and Acquisition Agreement amendment to include a legal expenditure category and anticipate the amendment to be fully executed by the end of July 2003.

**STATUS**

Target for implementation – August 1, 2003

**PUBLIC WORKS' RESPONSE TO THE LA VINA MELLO-ROOS AUDIT  
(COMMUNITY FACILITIES DISTRICT NO. 7)**

**RECOMMENDATION #8**

DPW management, in conjunction with County Counsel, revise the language in the F&AA for future CFDs to clearly state the developer has the option of not seeking reimbursement of any expenditures in an expenditure category and require that DPW formally amend the F&AA to reflect the deletion of the expenditure category and the re-allocation of estimated expenditures to existing or new expenditure categories.

**RESPONSE**

Public Works believes the existing language is already sufficient to address this issue. However, we will consult with County Counsel to review the language to ensure this specific issue is properly covered for future Community Facilities Districts. We also believe this should be reviewed by the Mello-Roos Task Force to ensure the contract language clearly outlines the process for deleting or adding items of work from the approved description of facilities.

As already mentioned, Public Works has initiated the Funding and Acquisition Agreement amendment to include a legal expenditure category and anticipates the amendment to be fully executed by the end of July 2003.

**STATUS**

Target for implementation – October 31, 2003. However, this date is subject to change based upon meeting with County Counsel to obtain an understanding of the intricacies of revising the language in the Funding and Acquisition Agreement and meeting with the Mello-Roos Task Force to obtain their input on other changes that must be made to the Agreement and its processes.

**RECOMMENDATION #9**

The Mello-Roos Task Force should formally evaluate the permissibility of reimbursing a developer for mitigation fees, under County policy, through Mello-Roos and advise the Board of its findings and recommendations.

**RESPONSE**

Public Works believes that mitigation fees are permissible for reimbursement for Mello-Roos projects based upon discussions with County Counsel during the preparation of the Funding and Acquisition Agreement but agrees that the specific use of these mitigation fees should be clarified in the Agreement. We

**PUBLIC WORKS' RESPONSE TO THE LA VINA MELLO-ROOS AUDIT  
(COMMUNITY FACILITIES DISTRICT NO. 7)**

will suggest that the Mello-Roos Task Force review all mitigation fees to be for reimbursement through Mello-Roos funds to determine which fees specifically comply with County policies (e.g., the useful life of five years) for reimbursement.

**STATUS**

Target for implementation – October 31, 2003. However, this date is subject to change based upon the determination of the Mello-Roos Task Force and guidance from the Board.

**RECOMMENDATION #10**

**DPW establish a mechanism to monitor developer compliance with the F&AA requirement to competitively bid projects and select the lowest responsible bidder who is required to pay prevailing wages.**

**RESPONSE**

Public Works agrees with the recommendation; however, we need to work with the Mello-Roos Task Force in order to make the proposed changes. We propose including a process similar to our current construction contracting procedures to eliminate the necessity of individual invoices and receipts. This would include the requirement of having a Public Works representative review the preparation of specifications and bid items prior to advertising, monitor the advertising process, and be present during the opening of the bids for each Mello-Roos facility. The developer would then be required to provide a summary of the bid results and a copy of the low bidders contract. Reimbursement payment would subsequently be based entirely upon the contracts awarded for the construction of Mello-Roos facilities and work completed would still be verified by Public Works inspectors. However, reimbursement requests would be processed solely from payments made toward the contract.

**STATUS**

Target for implementation – October 31, 2003. However, this date is subject to change based upon meeting with County Counsel and meeting with the Mello-Roos Task Force to obtain their input on other changes that must be made to the Funding and Acquisition Agreement and its processes.